Supreme Court, U.S.
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No. 90-1984

In The

Supreme Court of the United States

October Term, 1991

PAMELA CHAMBERS GORMAN, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF DALE GORMAN, DECEASED AND AS NEXT FRIEND OF AMANDA MARIE GORMAN, A MINOR,

Petitioners,

v.

LIFE INSURANCE COMPANY OF NORTH AMERICA, AND TENNECO INC.,

Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of Texas

CONSOLIDATED BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Do Texas state courts have jurisdiction to consider state common law and statutory causes of action related to an ERISA benefit plan so long as the state causes of action are not specifically enumerated under ERISA, the Employee Retirement Income Security Act of 1974?

2. Should this Court overrule its decision in *International Longshoremen's Association v. Davis*, 476 U.S. 380 (1986)?

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No. 90-1984

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PAMELA CHAMBERS GORMAN, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF DALE GORMAN, DECEASED AND AS NEXT FRIEND OF AMANDA MARIE GORMAN, A MINOR,

Petitioners,

v.

LIFE INSURANCE COMPANY OF NORTH AMERICA, AND TENNECO INC.,

Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of Texas

CONSOLIDATED BRIEF IN OPPOSITION

The respondents, Life Insurance Company of North America (hereafter "LINA") and Tenneco Inc., respectfully request that this Court deny the petition for writ of certiorari in this case. The opinion of the Supreme Court of Texas is reported at ___ S.W.2d ___ (Tex. 1991), 34 Tex. Sup. Ct. J. 457.

STATEMENT OF THE CASE

The respondents generally agree with the statement of the case provided by the petitioners. However, certain statements by the petitioners need to be corrected.

While neither LINA nor Tenneco pleaded ERISA pre-emption as an affirmative defense in the trial court, both parties "maintained throughout the proceedings that ERISA pre-empted [petitioners'] state law claims . . . " (Petition at 22a-23a).[1] Contrary to the petitioners' assertion (*see* Petition at 4 n.3), the record amply supports this conclusion of the court of appeals (Tr. 61, 207-08; S.F. 8-18, 50-55, 673-684).[2] The petitioners consistently ignored the respondents' preemption claims and denied that they were making any claim under ERISA (Petition at 23a; S.F. 10, 13, 15, 18, 52, 53, 679).

At the conclusion of the case, a jury rendered a verdict in petitioners' favor (Petition at 2a). LINA and Tenneco moved for judgment notwithstanding the verdict, or alternatively, to disregard findings on the special issues for a variety of reasons, including that no evidence supported the finding that Dale Gorman was in the travel and sojourn of Tenneco at the time of his death (Petition at 2a, 19a). The trial court disregarded the jury's finding of travel and sojourn (Petition at 2a) (Tr. 186, 207-208). Contrary to the petitioners' assertions (*see* Petition at 4),

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[1] The petition for writ of certiorari in this case is referred to as the "Petition."

[2] References to the state court record are to the transcript, abbreviated "Tr." and to the statement of facts, abbreviated "S.F."

the trial court also granted LINA's and Tenneco's motions for judgment notwithstanding the verdict without limitation to a specific ground. In Tenneco's motion, the stated grounds included ERISA preemption and lack of subject matter jurisdiction over certain of the petitioners' claims (Tr. 128-30, 133-35, 207-08).

The Supreme Court of Texas recognized that ERISA confers concurrent jurisdiction on state courts over actions by a participant or beneficiary to recover benefits due, to enforce rights under a plan, or to clarify rights to future benefits (Petition at 6a, 13a). The Supreme Court of Texas construed the petitioners' state law breach of contract claim as a claim for benefits due under ERISA (Petition at 11a & n.9), and held that the state court had jurisdiction to consider their claims for $250,000 in policy benefits, attorneys' fees, and prejudgment interest (Petition at 13a, 15a-16a).

As to the petitioners' remaining claims for breach of fiduciary duty, breach of the duty of good faith and fair dealing, and penalties under the Texas Insurance Code, the Texas Supreme Court held these claims did not fall within the limited concurrent jurisdiction of the state courts (Petition at 8a-10a, 13a-14a). Consequently, LINA's and Tenneco's assertions of ERISA preemption constituted a challenge to the subject matter jurisdiction of the state court which could be raised for the first time on appeal (Petition at 10a, 14a), and the petitioners thus were not entitled to recover damages on these claims (Petition at 10a, 14a).

REASONS THE PETITION SHOULD BE DENIED

I. The Petitioners Have Not Demonstrated Any Compelling Reason To Review This Case

There are no "special" or "important" reasons why a writ of certiorari should be granted in this case, and the Court should decline review. *See* Sup. Ct. R. 10.1. Contrary to petitioners' assertions, the Texas Supreme Court has not misconstrued ERISA or this Court's opinion in *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58 (1987). In reaching its decision, the Texas Supreme Court correctly followed the decisions of this Court and the courts of appeals. The Texas Supreme Court's decision is not in conflict with the decision of any United States court of appeals or any state court of last resort, and it does not present an important question of federal law "which has not been, but should be, settled by this Court." Sup. Ct. R. 10.1(b), (c).

Further, the Texas court's opinion in this case will not create havoc for the administration of justice. This case arose prior to this Court's opinions in *International Longshoremen's Ass'n v. Davis*, 476 U.S. 380 (1986), *Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987), and *Metropolitan Life v. Taylor*, 481 U.S. 58 (1987). At the time this case was filed, the force and effect of ERISA preemption was not widely recognized by the courts or by litigants. Given the intervening decisions of this Court, that is not the situation today. Thus, there is only a remote chance that the anomalous situation presented here will be repeated.

Moreover, the petitioners were well aware of respondents' objections to the state trial court's jurisdiction but nonetheless chose to proceed in state court. The time they

spent in the Texas state courtroom was a calculated risk they were more than willing to take. In any event, the policy of judicial economy, although important, simply cannot confer jurisdiction where Congress has decreed that none exists.

Finally, the Texas court's opinion may not be a "final judgment" under 28 U.S.C. § 1257 (Supp. 1991). *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). The Texas Supreme Court reversed in part the decision of the court of appeals pertaining to LINA and remanded the petitioners' claims for denial of benefits, prejudgment interest, and attorneys' fees (Petition at 16a). That portion of the case may later present a federal question for this Court, at least as to the propriety of the standard of review for the denial of benefits. Because this case is not final as to all parties and all issues, this Court should decline to exercise jurisdiction. *See, e.g., San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 633 (1981) (decision not final where further proceedings involved federal question); *Arnold v. United States*, 263 U.S. 427, 434 (1923) (to be reviewable, a judgment must be final as to all parties and all causes of action involved).

II. The Opinion Of The Texas Supreme Court Does Not Conflict With The Opinions Of The United States Courts Of Appeals Or Other State Courts Of Last Resort

In an effort to create a conflict where none exists, the petitioners mischaracterize not only the holding of the Texas Supreme Court in this case, but also the holdings of virtually every case the petitioners cite. The petitioners assert that the Texas Supreme Court has held that every

claim of ERISA preemption is jurisdictional, while the Fifth Circuit and other state courts have held that every claim of ERISA preemption is a waivable affirmative defense (*see* Petition at 9-11). Neither the petitioners' characterization of the Texas Supreme Court's decision in this case nor their characterization of the allegedly conflicting decisions is accurate. In fact, the Texas Supreme Court's decision is in complete accord with virtually every other decision considering the effect of ERISA preemption.

Relying on this Court's decision in *International Longshoremen's Ass'n v. Davis*, 476 U.S. 380 (1986), the Texas Supreme Court distinguished between preemption claims that affect the choice of forum and preemption claims that merely affect the choice of law to be applied in a particular case (Petition at 4a-8a). As to a preemption claim that affects the choice of forum, the Texas court held that it is jurisdictional in nature, cannot be waived, and may be raised for the first time on appeal. *Id.* As to a preemption claim that affects only the choice of law, the supreme court held that such a claim is not jurisdictional in nature, can be waived, and must be affirmatively pleaded in the trial court. *Id.*

In reaching its decision, the supreme court relied upon and followed every decision cited by the petitioners as conflicting – all of which distinguish between preemption claims involving a choice of law and preemption claims involving a choice of forum (Petition at 7a-8a).

For example, in *Dueringer v. General American Life Insurance Co.*, 842 F.2d 127 (5th Cir. 1988), the Fifth Circuit relied on a Ninth Circuit case, *Gilchrist v. Slemons Imports,*

Inc., 803 F.2d 1488 (9th Cir. 1986), to distinguish between preemption arguments that involve a choice of law and those that involve a choice of forum. Consistent with *Gilchrist*, and with the Texas Supreme Court's decision in this case, the Fifth Circuit held that when preemption involves only a choice of law, it must be asserted as an affirmative defense. *Dueringer*, 842 F.2d at 130. However, the Fifth Circuit did not hold that ERISA preemption involves a choice of law in every case or that ERISA preemption must be asserted as an affirmative defense in every case. Unlike the present case, the *Dueringer* litigants were in the proper forum, a federal district court. As the federal court plainly had jurisdiction under ERISA, the Fifth Circuit held that the defendants' preemption argument involved only a choice of law, and thus, was waived if not pleaded.

In *Heci Exploration Co. v. Holloway*, 862 F.2d 513 (5th Cir. 1988), the Fifth Circuit again held that a preemption defense is waived when the availability of the defense does not affect the forum in which the case is to be heard, but only the law that is to govern resolution of the claim. The court explained that "although our recent decision in *Dueringer* discusses ERISA preemption in terms of choice of law, it does so simply to distinguish between cases in which availability of the preemption defense would affect the choice of forum and those in which the availability of the defense would affect only the law to govern the case." 862 F.2d at 521 n.13 (citing *Johnson v. Armored Transport of California, Inc.*, 813 F.2d 1041, 1043-44 (9th Cir. 1987) and *Gilchrist*, 803 F.2d at 1497). As in *Dueringer*, the *Heci Exploration* case was tried in federal court, and the Fifth Circuit noted the defendant did not raise the issue of

preemption in order to challenge the forum, but only to challenge the law which was applied to the case. 862 F.2d at 520 n.10. Consequently, the court held the defendant's preemption claim had to be affirmatively pleaded or it was waived.

Likewise, in *Rehabilitation Institute of Pittsburgh v. Equitable Life Assurance Society of the United States*, 131 F.R.D. 99 (W.D. Pa. 1990), the court discussed the distinction between choice of forum and choice of law, noted that when preemption involves a choice of forum it is nonwaivable, and determined that in the particular case ERISA preemption was a waivable affirmative defense. 131 F.R.D. at 101. As in *Dueringer* and *Heci Exploration*, because the case was pending in federal court, there was no question of improper forum.

In *Hughes v. Blue Cross*, 215 Cal. App. 3d 832, 263 Cal. Rptr. 850, 861-62, (Cal. Ct. App. 1st Dist. 1989), *cert. dismissed*, 110 S.Ct. 2200 (1990), the court stated that where a defense bears on choice of forum, it involves subject matter jurisdiction, and cannot be waived. In *Hughes*, the court recognized that a claim for "breach of fiduciary obligations" – the very claim the petitioners made against Tenneco here – fell within the exclusive jurisdiction of the federal courts under 29 U.S.C. § 1132(e)(1) (1985). Therefore, it implicated the court's subject matter jurisdiction. 263 Cal. Rptr. at 860. Similarly, in both *Johnson v. Armored Transport of California, Inc.*, 813 F.2d 1041 (9th Cir. 1987), and *Gilchrist v. Slemons Imports, Inc.*, 803 F.2d 1488 (9th Cir. 1986), the Ninth Circuit recognized that a preemption argument affecting the choice of forum rather than merely the choice of law is not waivable and can be raised for the first time on appeal.

Every case cited by the petitioners is in accord with the holding and decision of the Texas Supreme Court in this case. No conflict exists. As the Texas Supreme Court correctly held, the petitioners' tort claims were within the exclusive jurisdiction of the federal courts, and thus, the respondents' claims of ERISA preemption could be raised at any time.

III. The Texas Supreme Court Correctly Interpreted ERISA's Jurisdictional Provisions

Without any supporting authority, the petitioners argue that the Texas state courts have jurisdiction over state law causes of action that admittedly relate to an ERISA-regulated plan, but which are not brought "under" ERISA. According to the petitioners, a cause of action is brought under ERISA – and is thus within the exclusive jurisdiction of the federal courts – only when ERISA provides an essential element of the claim. If the state law would provide a remedy in the absence of ERISA, ERISA cannot, and does not, provide an essential element of the claim.

Stated succinctly, the petitioners' argument is that a claim by any other name is not an ERISA claim. So long as a plaintiff does not label his cause of action an ERISA cause of action, the state court can assert jurisdiction over the action despite ERISA's preemption and jurisdictional provisions.

Correctly relying on this Court's decision in *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58 (1987), the Supreme Court of Texas rejected the petitioners' argument in a footnote (Petition at 5a-6a, n.4). The petitioners

do not direct this Court to any authority that has accepted, or even discussed, their novel interpretation of ERISA's preemption and jurisdictional provisions. No such authority exists.

To the contrary, the petitioners' analysis of ERISA has been squarely rejected by this Court and courts around the country. In *Pilot Life Insurance Co. v. Dedeaux*, this Court recognized that Congress's manifest intent in enacting ERISA was "that *all suits* brought by beneficiaries or participants *asserting improper processing of claims* under ERISA-regulated plans *be treated as federal questions governed by § 502(a).*" 481 U.S. 41, 56 (1987) (emphasis added). In *Metropolitan Life Insurance Co. v. Taylor*, this Court held that common law causes of action asserting claims for improper processing of benefits, *although purporting to raise only state law claims*, are "necessarily federal in character," and " 'arise under, the . . . laws . . . of the United States,' " specifically under section 502(a) of ERISA. 481 U.S. 58, 67 (1987).

Consistent with these holdings, the Texas Supreme Court held that the petitioners' common law causes of action, other than their breach of contract claim for benefits – although purporting to raise only state law claims – were within the class of actions governed by and arising under section 502(a) of ERISA, and over which the federal courts have exclusive jurisdiction (Petition at 7a-10a, 13a-14a).

For the court to have held otherwise would have required it to ignore this Court's decisions and Congress's intent in enacting ERISA. As this Court concluded in *Pilot Life*:

> [T]he detailed provisions of section 502(a) set forth a comprehensive civil enforcement scheme that represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA. . . . The deliberate care with which ERISA's civil enforcement remedies were drafted and the balancing of policies embodied in its choice of remedies argue strongly for the conclusion that ERISA's civil enforcement remedies were intended to be exclusive. This conclusion is fully confirmed by the legislative history of the civil enforcement provision.

481 U.S. at 54.

The petitioners' artificial definition of claims brought "under" ERISA cannot be reconciled with the goals and purpose of ERISA. The petitioners seek to accomplish the very result this Court disapproved in *Pilot Life* – the ability to obtain remedies under state law that Congress expressly rejected in ERISA.

The petitioners' narrow focus on the single word "under" without reference to the statute as a whole, its purpose, and policy is improper. This Court has consistently held that in deciding questions of statutory construction, the courts must look to the object and policy of the whole law, not simply to a single word or sentence. *See, e.g., Pilot Life*, 481 U.S. at 51. The petitioners ignore

the object and policy of ERISA, because it resoundingly refutes their argument.

As this Court has repeatedly recognized, Congressional intent requires that *all* actions, however named, asserting improper handling of benefit claims under ERISA-regulated plans be treated as arising under section 502(a). *Pilot Life* 481 U.S. at 56. Because the petitioners' state law claims, other than their breach of contract claim for benefits, are not within the concurrent jurisdiction of the state courts, they necessarily fall within the exclusive jurisdiction of the federal courts. *See* 29 U.S.C. § 1132(e) (1985). *C.f. San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 245 (1959) (when activity "is arguably subject" to the NLRA, state courts must "defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted").

IV. This Court Should Not Overrule Its Recent Decision In *International Longshoremen's Association v. Davis*

Other than their assertion that the decision "makes cases such as this inevitable," (Petition at 11), the petitioners offer no reason why the Court should reconsider its recent decision in *International Longshoremen's Ass'n v. Davis*, 476 U.S. 380 (1986). Neither the Supreme Court of Texas nor any other court has expressed difficulty understanding or applying the principles articulated in *Davis*. As discussed above, the courts, including the Texas

Supreme Court, are virtually unanimous in their interpretation of the force and effect of ERISA's preemption provisions.

This case was decided correctly; it suggests no compelling need to reexamine *Davis*.

CONCLUSION

The decision of the Texas Supreme Court, which the petitioners ask this Court to review, comports with the applicable decisions of this Court and the lower federal courts. There is nothing "special" or "important" under Rule 10 for this Court to consider. The petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

LIST NAMING ALL PARENT COMPANIES AND SUBSIDIARIES OF RESPONDENTS LIFE INSURANCE COMPANY OF NORTH AMERICA AND TENNECO INC., AS REQUIRED BY RULE 29.1 OF THIS COURT

Life Insurance Company of North America

CIGNA Corporation

CIGNA Holdings, Inc.

Connecticut General Corporation

AIC Holdings, Inc.

Allegiance Insurance Company

CIGNA Direct Marketing Company, Inc.

CIGNA Life Insurance Company of Canada

CIGNA Private Equities, Inc.

CIGNA Road & Travel Club, Inc.

INA Life Insurance Co., Ltd.

International Benefit Services Corporation

Tenneco Inc., now known as Tennessee Gas Pipeline Company

The incident made the basis of this action occurred in 1982, when Dale Gorman, an employee of Tenneco Inc., died in an automobile accident. In 1987, the name of respondent Tenneco Inc. was changed to Tennessee Gas Pipeline Company and it became a wholly owned subsidiary of Tenneco Inc., formerly known as Tenneco Holdings, Inc., a company incorporated in 1987 under Delaware law.

The parent company of respondent Tenneco Inc., now known as Tennessee Gas Pipeline Company, is Tenneco

Inc. The subsidiaries and affiliates of Tennessee Gas Pipeline Company are included in the following list of affiliates and subsidiaries of Tenneco Inc. as of December 30, 1990. The term "subsidiary" can be subject to a variety of interpretations, ranging from narrow to broad. This list is provided giving the term "subsidiary" a broad interpretation and includes both direct and indirect "subsidiaries." Non-wholly owned "subsidiaries" are denoted by an asterisk.

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*Case Poclain S.A. (France)

*J.I. Case SpA (Italy)

Poclain Services North America Inc. (Delaware)

Tenneco Credit Corporation (Delaware)

*Counce Limited Partnership (Texas Limited Partnership)

Counce Finance Corporation (Delaware)

TenFac Corporation (Delaware)

Tenneco Management Company (Delaware)

Tennessee Gas Pipeline Company (Delaware)

Albright & Wilson Americas Inc. (Delaware)

*Albright & Wilson Company (Virginia General Partnership)

*Purified Acid Partners (Virginia General Partnership)

Chemrich, Inc. (Louisiana)

Rio Linda Chemical Co., Inc. (Delaware)

Altamont Service Corporation (Delaware)

*Border Gas, Inc. (Delaware)

Brake-Pro Systems Inc. (Delaware)

DeKoven Manufacturing Co. (Wisconsin)

East Tennessee Natural Gas Company (Tennessee)

Eastern Insurance Company Limited (Bermuda)

ERCO Industries Inc. (Delaware)

Intake Water Company (Delaware)

Kern River Corporation (Delaware)

*Kern River Gas Transmission Company (Texas General Partnership)

*Kern River Gas Supply Corporation (Delaware)

*Kern River Service Corporation (Delaware)

Land Ventures Inc. (Delaware)

Lorneterm LNG Limited (Canada)

Midwestern Gas Marketing Company (Delaware)

Midwestern Gas Transmission Company (Delaware)

Viking Gas Transmission Company (Delaware)

Monroe Auto Equipment Company (Delaware)

McPherson Strut Company Inc. (Delaware)

Monroe Auto Equipement France S.A. (France)

*Monroe Europe Coordination Center NV (Belgium)

*Monroe Italia S.r.l. (Italy)

*Monroe Packaging NV (Belgium)

*Monroe Auto Pecas S.A. (Brazil)

Monroe Europe (UK) Limited (United Kingdom)

Rancho Industries Europe B.V. (Netherlands)

Regal Ride Shock Absorber Company (Michigan)

*Tenneco Automotive Foreign Sales Corporation Limited (Jamaica)

Tenneco Automotive International Sales Corporation (Delaware)

Tenneco Automotive Japan Ltd. (Japan)

Mont Belvieu Land Company (Delaware)

New Tenn Company (Delaware)

New Tennessee Gas Pipeline Company (Delaware)

Northeastern Gas Transmission Company (Delaware)

Tenneco Alaska, Inc. (Alaska)

Tenneco-Altamont Corporation (Delaware)

*Altamont Gas Transmission Company (Delaware Joint Venture)

Tenneco China Trade Inc. (Delaware)

Tenneco Coal Company (Delaware)

Tenneco Communications Corporation (Delaware)

Tenneco Corporation (Delaware)

Channel Industries Gas Company (Delaware)

J. I. Case GmbH (Germany)

Kern County Land Company (Delaware)

Case Corporation (Delaware)

Case Credit Corporation (Wisconsin)

Case Engine Holding Company, Inc. (Delaware)

*Consolidated Diesel Company (North Carolina Partnership)

Consolidated Diesel, Inc. (Delaware)

Consolidated Diesel of North Carolina, Inc. (North Carolina)

Case Irrigation Company (Delaware)

Case Ventures Corporation (Delaware)

*Hay & Forage Industries (Kansas General Partnership)

Coastal International, Inc. (Delaware)

Grand Detour Plow Company (Wisconsin)

Kase, S.A. De C.V. (Mexico)

J. I. Case Argentina, S.A. (Argentina)

J. I. Case do Brasil & Cia (Brazilian General Partnership)

Case Assets Management S/C Ltda. (Brazil)

Monroe do Brasil Industria e Comercia Ltda. (Brazil)

*Monroe Auto Pecas S.A. (Brazil)

*Poclain do Brasil S.A. (Brazil)

*P.P.M. Guindastes Hidraulicos S.A. (Brazil)

J. I. Case International, S.A. (Venezuela)

J. I. Case Leasing Corporation (Wisconsin)

J. I. Case Mfg. Company, Inc. (Wyoming)

J. I. Case Threshing Machine Company (Wisconsin)

Marlin Drilling Co., Inc. (Delaware)

Bluefin Supply Company (Delaware)

*Marlin do Brasil Perfuracoes Maritimas Ltda. (Brazil)

Pryor Foundry, Inc. (Oklahoma)

Steiger Tractor, Inc. (Delaware)

Integrated Technical Systems, Inc. (North Dakota)

Steiger Australia Ltd. (North Dakota)

Steiger Financial Corp. (Pty) Ltd. (Australia)

Steiger Credit Company (North Dakota)

Steiger Credit Canada Ltd. (Canada)

Steiger International, Ltd. (Guam)

*Tenneco Canada Inc. (Ontario)

Albright & Wilson Americas Inc. (Canada)

Dunville Mining Company Limited (Newfoundland)

Electric Reduction Sales Co., Limited (Canada)

ERCO Industries of Canada Limited (Canada)

Tenneco Credit Canada Corp. (Alberta)

Viscosity Oil Company (Illinois)

Viscosity Oil of Canada Ltd. (Canada)

Tenneco West, Inc. (Delaware)

Boquillas Cattle Company (Arizona)

Kern County Land Company, Inc. (California)

Tenneco Arizona Property Corporation (Arizona)

LHC Pipeline Company (Delaware)

Petro-Tex Chemical Corporation (Delaware)

State Gas Pipeline Company (Delaware)

SWL Security Corp. (Texas)

TGP Corporation (Delaware)

THC Pipeline Company (Delaware)

Tenneco Cogeneration Development Company (Delaware)

*Tenneco Deutschland Beteiligungs GmbH (Germany)

Case Vibromax GmbH (Germany)

*Case Vibromax GMBH & Co. KG. (Germany)

Vibromax Australia (Pty) Ltd. (Australia)

*Vibromax France SARL (France)

*Vibromax SCI (France)

Monroe Auto Equipment Company GmbH (Germany)

Omni-Pac Ekco GmbH (Germany)

*Ekco S.r.l. (Italy)

*PCA Embalajes Espana, S.L. (Spain)

*Omni-Pac GmbH (Germany)

Omni-Pac ApS (Denmark)

Omni-Pac A.B. (Sweden)

*Omni-Pac S.A.R.L. (France)

*Poclain GmbH (Germany)

*Case Poclain GmbH & Co. KG. (Germany)

Sperry Marine GmbH (Germany)

*Walker Deutschland GmbH (Germany)

Tenneco Espana S.A. (Spain)

Tenneco Independent Power I Company (Delaware)

Tenneco Independent Power II Company (Delaware)

Tenneco Insurance Ventures Inc. (Delaware)

Tenneco Inc. (Nevada)

Tenneco InterAmerica Inc. (Delaware)

Newport News Shipbuilding and Dry Dock Company (Virginia)

Asheville Industries Inc. (North Carolina)

Greeneville Industries Inc. (Virginia)

The James River Oyster Corporation (Virginia)

Newport News Industrial Corporation (Virginia)

Newport News Industrial Corporation of Ohio (Ohio)

Newport News Reactor Services, Inc. (Virginia)

Sperry Marine Inc. (Delaware)

Sperry Marine – Asia Inc. (Virginia)

Packaging Corporation of America (Delaware)

A&E Plastics, Inc. (Delaware)

*Alcan Ekco Limited (United Kingdom)

Alupak AG (Switzerland)

*American Cellulose Corporation (Delaware)

*A/S Haustrup-Ekco Aluminium-Emballage (Denmark)

Plus Pack AB Svenska Haustrup-Ekco (Sweden)

Plus Pack A/S (Norway)

Plus Pack GmbH (Austria)

Plus Pack GmbH (Switzerland)

The Corinth and Counce Railroad Company (Mississippi)

Dahlonega Packaging Corporation (Delaware)

Dixie Container Corporation (Virginia)

Dixie Convoy Corporation (North Carolina)

Ekco N.V. (Belgium)

*Ekco S.A.R.L. (France)

EKCO Products, Inc. (Illinois)

E-Z Por Corporation (Delaware)

Omni-Pac Embalajes, S.A. (Spain)

P C A Verpackungsmittel GmbH (Germany)

PCA West Inc. (Delaware)

*Coast-Packaging Company (California General Partnership)

Packaging Corporation of America (Nevada)

Packaging Corporation of America (U.K.) Limited (United Kingdom)

Polbeth Packaging Limited (United Kingdom)

Brucefield Plastics Limited (United Kingdom)

Polbeth Packaging (Corby) Limited (United Kingdom)

Pakon Industries (California)

Pressware International, Inc. (Delaware)

Revere Foil Containers, Inc. (Delaware)

798795 Ontario Limited (Ontario)

PCA Canada Inc. (Ontario)

Tennessee River Pulp & Paper Company (Delaware)

*Toyo Ekco Company, Ltd. (Toyo Ekco Kubushiki, Kaisha) (Japan)

Tenneco Minerals Company (Delaware)

Houston Oil & Minerals Exploration Company (Texas)

Tenneco Minerals Company of Australia, Inc. (Delaware)

Tenneco Minerals Company – Nevada (Delaware)

Tenneco Minerals Company – Utah (Delaware)

Tenneco OCS Company, Inc. (Delaware)

Tenneco Soda Ash Company (Delaware)

Tenneco Soda Ash Joint Venture (Wyoming General Partnership)

Tenneco Oil Company (Delaware)

La Terre Colombia, S.A. (Cayman Islands)

Multistate Oil Properties, N.V. (Netherlands Antilles)

Operators, Inc. (Delaware)

Tenneco Oil Company of Nigeria (Delaware)

*Tenneco Oil Company of Nigeria Unlimited (Nigeria)

Tenneco Polymers, Inc. (Delaware)

Tenneco Eastern Realty, Inc. (New Jersey)

Tenneco Synfuels Company (Delaware)

Tennessee Overthrust Gas Company (Delaware)

Tenngasco Corporation (Delaware)

Creole Gas Pipeline Corporation (Louisiana)

Tenngasco Exchange Corporation (Delaware)

*Tenngasco Gas Gathering Company (Delaware)

Tenngasco Gas Supply Company (Delaware)

*HT Gathering Company (Texas)

*Oasis Pipeline Company (Delaware)

Tenngasco Marketing Corporation (Delaware)

West Africa Corporation (Delaware)

Tenneco Delta XII Gas Co. Inc. (Delaware)

Tenneco Energy Ltd. (Canada)

Tenneco Foreign Sales Corporation (U.S. Virgin Islands)

Tenneco Gas Inc. (Delaware)

Tenneco Gas Marketing Company (Delaware)

Tenneco Gas Production Corporation (Delaware)

Tenneco Gas Transportatioin Company (Delaware)

Tenneco Gas Louisiana Inc. (Delaware)

Tenneco Gas Processing Company (Delaware)

Tenneco Gas Services, Inc. (Delaware)

Tenneco Gas Supply Corporation (Delaware)

Tenneco Heavy Duty Brake, Ltd. (Ontario)

Tenneco International Inc. (Delaware)

Case Belgium Inc. (Delaware)

Compania de Financiacion Case, S.A. (Spain)

J. I. Case (Australia) Pty., Limited (Australia)

J. I. Case Credit Corporation of Australia Pty. Ltd. (Australia)

J. I. Case Norge A/S (Norway)

J. I. Case Operations (Europe) Inc. (Delaware)

J. I. Case S.A. (Spain)

J. I. Case Sweden Inc. (Delaware)

Monroe Australia Proprietary Limited (Australia)

Walker Australia Pty. Limited (Australia)

Wylie Superannuation Pty. Ltd. (Australia)

S A Tenneco Belgium (J I Case-Monroe-Petro-Tex-Sperry-Marine) N.V. (Belgium)

*Borusan Amortisor Imalat Ve Ticaret AS (Turkey)

International Harvester Company of Belgium N.V. (Belgium)

*Monroe Europe Coordination Center NV (Belgium)

*Monroe Packaging NV (Belgium)

Sperry Marine SARL (France)

Sperry Marine S.p.A. (Italy)

Tenneco Automotive Trading Company (Delaware)

Tenneco Holdings B.V. (Netherlands)

Sperry Marine B.V. (Netherlands)

Tenneco Holdings Danmark A/S (Denmark)

Case Traktori Oy (Finland)

J. I. Case A/S (Denmark)

Sperry Marine A/S (Denmark)

Sperry Marine A/S (Norway)

Walker Danmark A/S (Denmark)

Tenneco International N.V. (Netherlands Antilles)

Tenneco Nederland B.V. (Netherlands)

Tenneco Norge Inc. (Delaware)

Tenneco Offshore Netherlands Company (Delaware)

Tenneco United Kingdom Holdings Limited (Delaware)

J. I. Case Europe (Holdings) Limited (Delaware)

Case Credit Limited (United Kingdom)

International Harvester Company of Great Britain Limited (United Kingdom)

J. I. Case Europe Limited (United Kingdom)

Omni-Pac U.K. Limited (United Kingdom)

Hartmann Fibre Limited (United Kingdom)

Tenneco Europe Limited (Delaware)

Tenneco Asia, Ltd. (United Kingdom)

Tenneco International Finance Limited (United Kingdom)

Case Credits Limited (United Kingdom)

*Sperry Marine Limited (United Kingdom)

Tenneco International Finance B.V. (Netherlands)

Tenneco International Holdings Limited (United Kingdom)

Albright & Wilson Limited (United Kingdom)

Albright & Wilson A.B. (Sweden)

Albright & Wilson A/S (Norway)

Albright & Wilson Asia (H.K.) Limited (Hong Kong)

Albright & Wilson Asia Pte Limited (Singapore)

*Albright & Wilson Asia Taiwan Limited (Taiwan)

Albright & Wilson Asia Trading (Malaysia) Sdn Bhd (Malaysia)

Albright & Wilson ESP Trustees Ltd. (United Kingdom)

Albright & Wilson Executive Pension Trustees, Ltd. (United Kingdom)

Albright & Wilson GmbH (Austria) (in liquidation)

Albright & Wilson Intertrade Ltd. (United Kingdom)

Albright & Wilson Chemicals (PTY), Ltd. (Australia)

Albright & Wilson (Australia) Limited (Australia)

Albright & Wilson New Zealand Limited (New Zealand)

Albright & Wilson (Malaysia) SDN. BHD. (Malaysia)

Albright & Wilson (Marchon) Pte. Limited (Singapore)

Albright & Wilson Lavera SARL (France)

Albright & Wilson Oils SDN BHD (Malaysia)

Albright & Wilson Overseas Ltd. (United Kingdom)

Albright & Wilson Aps (Denmark)

Albright & Wilson BV (Netherlands)

Albright & Wilson GmbH (Germany)

Albright & Wilson S.r.l. (Italy)

Marchon Espanola S.A. (Spain)

Marchon France S.A. (France)

Marchon Hellas Limited (Greece)

Marchon Italiana S.r.l. (Italy)

Marchon Sud S.r.l. (Italy)

*Polyphosphates Inc. (Philippines)

Albright & Wilson Pension Investments Ltd. (England)

Albright & Wilson Produtos Quimicos Ltda. (Brazil)

Albright & Wilson Resins and Organics Limited (United Kingdom)

Albright & Wilson Pension Trustees Ltd. (United Kingdom)

Albright & Wilson Works Pension Trustees Ltd. (United Kingdom)

Albright Dentifrice Phosphates SDN. BHD. (Malaysia)

*Albright, Morarji and Pandit Limited (India)

Proban Ltd. (United Kingdom)

*Specialty Phosphates (Malaysia) Sdn Bhd (Malaysia)

*Tenneco Canada Inc. (Ontario)

Albright & Wilson Americas Inc. (Canada)

Dunville Mining Company Limited (Newfoundland)

Electric Reduction Sales Co., Limited (Canada)

ERCO Industries of Canada Limited (Canada)

Tenneco Credit Canada Corp. (Alberta)

Tenneco Malros Ltd. (United Kingdom)

Tenneco Organics Ltd. (United Kingdom)

Case-Poclain Limited (United Kingdom)

David Brown Tractors Limited (United Kingdom)

David Brown Tractors (Belfast) Ltd. (United Kingdom)

David Brown Tractors (Ireland) Ltd. (Ireland)

David Brown Tractors (Retail) Ltd. (United Kingdom)

A. M. Exports Limited (United Kingdom)

Poclain Limited (United Kingdom)

Tractorwork, Limited (United Kingdom)

J. I. Case Company Limited (United Kingdom)

Monroe Auto Equipment (U.K.) Limited (United Kingdom)

Tenneco – Walker (U.K.) Limited (United Kingdom)

Tenneco West Limited (United Kingdom)

Walker UK Ltd. (United Kingdom)

J. W. Hartley (Motor Trade) Limited (United Kingdom)

Harmo Auto Services (Export) Limited (United Kingdom)

Thompson and Stammers (Dunmow) Number 5 Limited (United Kingdom)

Tractorwork Iberica, Inc. (Delaware)

Universaltrac Beteiligungs GmbH (Germany)

Walker Europe, Inc. (Delaware)

Walker France SA (France)

Walker Norge A/S (Norway)

Walker Sverige AB (Sweden)

J. I. Case Sweden A.B. (Sweden)

*Sara Gretes Cafeteria AB (Sweden)

Walker Nord AB (Sweden)

Tenneco International Marketing & Sourcing, Inc. (Delaware)

Tenneco LNG Inc. (Delaware)

Tenneco Methanol Company (Delaware)

Tenneco Natural Gas Liquids Corporation (Delaware)

*Mont Belvieu Associates (Texas General Partnership)

Tenneco MTBE, Inc. (Delaware)

Tenneco Norway LNG, Inc. (Delaware)

Tenneco Reality, Inc. (Delaware)

TRI Realty, Inc. (Texas)

Tennchase, Inc. (Texas)

Tenneco Shale Oil Company (Delaware)

Tenneco SNG Inc. (Delaware)

Tenneco Trinidad LNG, Inc. (Delaware)

Tenneco Turkiye, Inc. (Delaware)

Tennessee Gas Marketing Company (Delaware)

Tennessee Gas Transmission Company (Delaware)

Tennessee/New England Pipeline Company (Delaware)

Tennessee Niagara Gas Company (Delaware)

Tennessee Ozark Gas Company (Delaware)

Tennessee Storage Company (Delaware)

Tennessee Trailblazer Gas Company (Delaware)

Walker Electronic Mufflers, Inc. (Delaware)

Walker Manufacturing Company (Delaware)

Walker Marketing Corporation (Wisconsin)